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 on behalf of all others similarly situated*

**UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

MAXAMILLIAN KLEIN, et al.

Plaintiffs,

v.

FACEBOOK, INC.,

Defendant.

Case No. 20-CV-08570-LHK
*(Consolidated with Nos. 4:20-cv-08817,
 4:20-cv-08815, 3:21-cv-00337, 3:21-
 cv00336, 3:20-cv-09217, 4:20-cv-08721,
 3:20-cv-09130)*

***STEINBERG* PLAINTIFF'S BRIEF IN
 SUPPORT OF *KLEIN* PLAINTIFFS'
 APPLICATION TO APPOINT
 QUINN EMANUEL AND KELLER
 LENKNER AS INTERIM CO-LEAD
 USER CLASS COUNSEL**

Hearing Date: March 18, 2021
 Time: 1:30 PM
 Location: Courtroom 8
 Judge: Hon. Lucy H. Koh

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Federal Rule of Civil Procedure 23(g)(3), Plaintiff Charles Steinberg (“Plaintiff” or “Steinberg”) respectfully submits the instant memorandum regarding the appointment of interim lead counsel in the consolidated action *Klein v. Facebook*, No. 20-CV-08570. Steinberg supports the appointment of Quinn Emanuel Urquhart & Sullivan, LLP and Keller Lenkner LLC as co-lead interim counsel on behalf of the proposed class of Facebook users (the “User Class”), and for the appointment of separate interim lead counsel for the proposed class of advertisers on the Facebook platform (the “Advertiser Class”). While Plaintiff does not believe it is necessary for the Court to appoint any other firms to formal roles in the litigation, if the Court is inclined to appoint a committee structure, Plaintiff respectfully submits that Barrack, Rodos & Bacine is well qualified to be appointed as member of any such committee.

I. APPOINTMENT OF QUINN EMANUEL AND KELLER LENKNER

Steinberg supports the appointment of Quinn Emanuel and Keller Lenkner as lead counsel for the User Class in light of their demonstrated leadership in this matter thus far, including their extensive investigation leading to their first-filed complaint. Quinn Emanuel and Keller Lenkner filed their *Klein* complaint (Dkt. 1) on December 3, 2020, almost a week before various State Attorneys General and the Federal Trade Commission filed antitrust suits against Facebook.¹ As such, Quinn Emanuel and Keller Lenkner’s complaint is demonstrably the result of their own in-depth investigation. In addition, Quinn Emanuel’s and Keller Lenkner’s complaint is well-sourced and comprehensive. Both firms also have the experience, knowledge of antitrust law and the resources to successfully prosecute this litigation.

¹ See FTC Press Release (Dec. 9, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/12/ftc-sues-facebook-illegal-monopolization>

1 In appointing interim lead counsel, this Court has also considered the ability of counsel
2 to work cooperatively and efficiently with others. *See, e.g., In Re: Yahoo! Inc. Customer Data*
3 *Security Breach Litigation*, No. 5:16-md-02752-LHK, Dkt. 2 at 3 (N.D. Cal. Jan. 13, 2016).
4 We have worked alongside attorneys from Quinn Emanuel and Keller Lenkner in other cases
5 and have seen their skill in effectively and efficiently managing and prosecuting antitrust class
6 actions. Here, Quinn Emanuel and Keller Lenkner have demonstrated their leadership by
7 working cooperatively with counsel for other plaintiffs (including the undersigned counsel) and
8 have led efforts to build consensus on case management and other issues. For example, Quinn
9 Emanuel and Keller Lenkner led the effort regarding the orderly assignment of the initial User
10 cases (*Klein, Kupcho, Dames, and Steinberg*) to this Court. Before they moved to relate
11 *Kupcho, Dames, and Steinberg* to *Klein*, Quinn Emanuel and Keller Lenkner reached out to us
12 and counsel for these other plaintiff groups to solicit our views on the proper assignment of
13 these cases and other case management issues. We agreed to stipulate to Quinn Emanuel and
14 Keller Lenkner's motion, facilitating the transfer of these cases to this Court.

17 Following Judge Freeman's ruling denying the various motions to relate these cases to
18 the *Reveal Chat* action, Quinn Emanuel and Keller Lenkner once again built consensus among
19 counsel for both the User and Advertiser plaintiffs. Quinn Emanuel and Keller Lenkner
20 solicited the views of the various plaintiffs' groups, ultimately proposing a framework for the
21 proper assignment of the other cases to this Court, an application process for the appointment of
22 interim lead counsel, the filing of a consolidated complaint, and allowing Facebook to respond
23 to a consolidated complaint instead of any individual complaint. After building consensus
24 regarding these issues, Quinn Emanuel and Keller Lenkner drafted the proposal as a detailed
25

1 stipulation and circulated it to counsel for plaintiffs in all of the other then-pending User and
2 Advertiser Cases on January 31, 2021. Ultimately, counsel for the vast majority of the plaintiffs
3 agreed to the Quinn Emanuel and Keller Lenkner proposal.

4 From our various discussions with the Quinn Emanuel and Keller Lenkner attorneys, we
5 have seen first-hand these firms' leadership and consensus-building efforts and abilities, and we
6 are confident that these attributes will serve the User Class well.
7

8 **II. NEED FOR SEPARATE COUNSEL FOR USER AND ADVERTISER CLASSES**

9 These actions involve two putative classes: the User Class and the Advertiser Class.
10 Plaintiff, a member of the User Class only, and undersigned counsel also respectfully request that
11 the Court appoint separate interim lead counsel for the Advertiser Class. Courts frequently appoint
12 separate counsel for different plaintiff classes in antitrust cases for case management and other
13 practical reasons. Specifically, in the context of technology platforms (like Facebook), other courts
14 have likewise appointed separate interim lead counsel for different plaintiff classes in antitrust
15 cases. *See, e.g., Cameron et al v. Apple Inc.*, No. 19-cv-03074-YGR, Dkt. 65 (N.D. Cal. Oct. 10,
16 2019); *In re Apple iPhone Antitrust Litigation*, No. 11-cv-06714-YGR, Dkt. 34 (N.D. Cal. Apr. 9,
17 2012); *In re Google Play Consumer Antitrust Litig.*, No. 20-cv-5761, Dkt. 128 (N.D. Cal. Dec. 16,
18 2020); *In re Google Play Developer Antitrust Litig.*, No. 20-cv-5792, Dkt. 79 (N.D. Cal. Dec. 11,
19 2020). The appointment of separate counsel for different classes in this case will lead to
20 efficiencies in the litigation and will avoid any conflicts between the classes.
21

22 **III. POTENTIAL COMMITTEE ASSIGNMENT**

23 At this time, Plaintiff and undersigned counsel do not believe it is necessary to appoint any
24 formal committee structure in this action. In the event that the Court determines that a committee
25
26

structure is appropriate here, Barrack, Rodos & Bacine's deep experience in antitrust and other complex class litigation, paired with its demonstrated ability to work seamlessly with proposed interim lead counsel, weighs in favor of inclusion of the firm in any proposed committee structure. A true and correct copy of Barrack, Rodos & Bacine's firm resume is attached as Exhibit A to the Declaration of Samuel M. Ward.

CONCLUSION

For these reasons, Plaintiff supports the appointment of Quinn Emanuel Urquhart & Sullivan, LLP and Keller Lenkner LLC as Interim Lead Plaintiffs' Counsel on behalf of the the User Class, and the appointment of separate interim lead counsel on behalf of the Advertiser Class.

Dated: March 5, 2021

BARRACK, RODOS & BACINE

/s/ SAMUEL M. WARD
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**Pro Hac Vice Applications forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that on this this date, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System, causing the document to be served of all attorneys of record in this case.

Dated: March 5, 2021

/s/SAMUEL M. WARD
SAMUEL M. WARD